

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Docket No. **CAA-08-2005-0002**

IN THE MATTER OF:

Asbestos Technology, Inc.
Cheyenne, WY

Respondent

Consent Agreement

Complainant, United States Environmental Protection Agency,
Region 8(“EPA”), and Asbestos Technology, Inc. (“ATI” or “Respondent”), by their
undersigned representatives, hereby consent and agree as follows:

Introduction

1. The Administrator of the EPA and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged below.

2. This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties set forth at 40 C.F.R. Part 22.

3. Therefore, EPA has jurisdiction over this matter pursuant to section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), as amended on November 15, 1990, and is authorized to issue civil administrative actions and assess civil penalties for violations of the CAA.

4. EPA and the Respondent (collectively referred to as the “parties”) have agreed to the settlement of this matter before the filing of a complaint as authorized by 40 C.F.R. § 22.13(b), and to execute this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) and (3) for the purpose of simultaneously commencing and concluding this matter upon the issuance of a final consent order.

Allegations

5. Respondent is a Wyoming corporation and therefore a “person” as defined in section 7602(e) of the CAA, 42. U.S.C. § 7602.

6. EPA alleges that the Respondent failed to comply with federal regulations regarding the asbestos national emission standards for hazardous air pollutants (NESHAP) where asbestos renovation/demolition activities were taking place, found at 40 C.F.R. Part 61, Subpart M and, therefore, is in violation of the Clean Air Act and the asbestos NESHAP as specifically outlined below.

7. The asbestos NESHAP applies to, among other things, the demolition and renovation of buildings. 40 C.F.R. § 61.145; Wyoming Air Quality Standards and Regulations (WAQS&R) Chapter 3, Section 8.

8. The asbestos NESHAP, at 40 C.F.R. § 61.145(c)(3) requires each owner or operator of a demolition activity to, among other things, to adequately wet the regulated asbestos containing material (RACM) during the stripping operation while it is stripped from a facility component while it remains in place at the facility. WAQS&R Chapter 3, § 8(i)(iii)(C). If visible emissions are observed coming from ACM, then the material has not been adequately wetted. 40 C.F.R. § 61.141; WAQS&R Chapter 3, § 8(b)(ii).

9. The asbestos NESHAP, at 40 C.F.R. § 61.145(c)(6)(i), requires the owner or

operator of a demolition or renovation activity among other things, to adequately wet the RACM and ensure that it remains wet until collected and contained or treated in preparation for disposal. WAQS&R Chapter 3, § 8(i)(iii)(F)(I).

10. The asbestos NESHAP, at 40 C.F.R. § 61.150(a), requires that the owner or operator of a demolition or renovation activity “discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transportation of any asbestos containing material (ACM) generated by the source.” WAQS&R Chapter 3, § 8(m)(i). 40 C.F.R. § 61.150(a)(1)(ii) further states, “[d]ischarge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, c” WAQS&R Chapter 3, § 8(m)(i)(A)(II).

11. The asbestos NESHAP, at 40 C.F.R. § 61.150 (a)(1)(iii), requires the owner or operator of a demolition or renovation activity among other things, to seal all ACM materials in leak-tight containers while wet. WAQS&R Chapter 3, § 8(m)(i)(A)(III).

12. The asbestos NESHAP, at 40 C.F.R. § 61.150(b), requires the owner or operator of a demolition or renovation activity among other things, to deposit all ACM as soon as is practical to a waste disposal site operated in accordance with 40 C.F.R. § 61.154; WAQS&R Chapter 3, § 8(m)(ii).

13. The City of Casper owns a property at 951 S. Washington, Casper, Wyoming (Washington Park Bandshell).

14. The City of Casper entered into a contract with Respondent for an asbestos abatement project for a bandshell located in Washington Park.

15. Respondent performed an asbestos abatement project on the Washington

Park bandshell, in Casper, Wyoming.

16. The Cheyenne Eye Clinic owns a property at 2002 Dunn Ave., Cheyenne, Wyoming.

17. The Cheyenne Eye Clinic entered into a contract with Respondent for an asbestos abatement project at 2002 Dunn Ave., Cheyenne, Wyoming.

18. Respondent performed an asbestos abatement project at 2002 Dunn Ave., Cheyenne, Wyoming.

19. The NESHAP for asbestos applies to current and former structures located at 951 S. Washington, Casper, Wyoming and 2002 Dunn Ave., Cheyenne Wyoming.

20. On Thursday, April 5, 2001, F. Gerald Blackwell, Asbestos Coordinator, and Mr. Robert Rodriguez, Asbestos Inspector, Air Quality Division, made a follow-up inspection on the asbestos abatement project being performed by ATI, on the bandshell in Washington Park, Casper, Wyoming. This inspection was performed as a follow-up to the inspection concerns Mr. Rodriguez noted during his inspection on April 4, 2001. They noted a number of concerns with ATI's work procedures and took photographs and samples of suspect asbestos-containing material to document and confirm these concerns.

21. The samples obtained during the April 4th and April 5th inspections of the Washington Park bandshell, Casper, Wyoming were Federal Expressed to FRS Geotech on April 10, 2001 for analysis. The results of the analysis indicated that the samples contained up to 25% chrysotile asbestos.

22. On Monday, July 2, 2001, Mr. Robert Rodriguez, Asbestos Inspector and F. Gerald Blackwell, Asbestos Coordinator, Air Quality Division, made a routine asbestos

inspection on the above referenced abatement project being performed by ATI, at 2002 Dunn Ave., Cheyenne, Wyoming. They noted a number of concerns with ATI's work procedures and took photographs and samples of suspect asbestos-containing material to document and confirm these concerns.

23. The samples obtained during the July 2nd inspection at 2002 Dunn Ave., Cheyenne, Wyoming were Federal Expressed to FRS Geotech on July 3, 2001 for analysis. The results of the analysis indicated that the samples contained up to 6% chrysotile asbestos.

24. Respondent failed to adequately wet RACM during the stripping operations at both locations set forth in paragraph 19.

25. At the time of the inspections on April 4th and April 5th, as well as at the time of the inspection on July 2nd, there was dry RACM material loose on the floor of the work area with no indication water was being used during the stripping operations.

26. Respondent's failure to adequately wet RACM at both locations constitutes two violations of the regulations and therefore the statutes. 40 C.F.R. § 61.145(c)(8); WAQS&R Chapter 3, § 8(i)(iii)(C).

27. Respondent failed to adequately wet the RACM and ensure that it remains wet until collected and contained or treated in preparation for disposal at both locations set forth in paragraph 19.

28. Respondent's failure to adequately wet RACM and ensure that it remains wet until collected and contained or treated in preparation for disposal at each location constitutes two violations of 40 C.F.R. § 61.145(c)(6)(i); WAQS&R Chapter 3, § 8(i)(iii)(F)(I).

29. Respondent failed to not discharge any visible emissions to the outside air.

30. During the inspections on April 4th and April 5th, as well as during the inspection on July 2nd, ACM was found outside the work area which was exposed to the outside air. Additionally, the work containment area at the Bandshell location had numerous holes and tears in it providing the threat of emissions of ACM to the outside air.

31. Respondent's failure to not discharge any visible emissions at each location constitutes two violations of 40 C.F.R. § 61.150(a); WAQR&S Chapter 3, § 8(m)(i) for failing to keep ACM within the work containment area, providing the threat of emissions of ACM to the outside air.

32. Respondent failed to seal all ACM materials in leak-tight containers while wet.

33. During the inspection on April 5th, the trailer containing bagged asbestos containing waste material (ACWM) which was awaiting disposal was inspected and holes were noted in the bags. During the inspection on July 2nd, the truck containing bagged ACWM which was awaiting disposal was inspected and liquid from the bags was leaking into the bed of the truck.

34. Respondent's failure to seal all ACM material in leak-tight containers while wet at each location constitutes two violations of the 40 C.F.R. § 61.150(a)(1)(iii); WAQS&R Chapter 3, § 8(m)(i)(A)(III).

35. Respondent failed deposit all ACWM as soon as possible at a waste site operated in accordance with the provisions of 40 C.F.R. § 61.154; WAQS&R Chapter 3, § 8(m)(ii) paragraph (q).

36. During the inspections on April 4th, April 5th, and July 2nd ACWM was observed on the ground outside the containment area.

37. Respondent's failure to deposit as soon as possible all ACWM at a waste disposal site operated in accordance with the above provisions, constitutes two violations of 40 C.F.R. § 61.150(b); WAQS&R Chapter 3, § 8(m)(ii).

Settlement

38. Respondent admits the jurisdictional allegations contained herein and neither admit nor deny the specific factual allegations and violations alleged herein.

39. Respondent waives the right to a hearing before any tribunal, to contest any issue of law or fact set forth in this Consent Agreement.

40. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondents agree that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter.

41. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondents and Respondents' officers, directors, employees, agents, successors, assigns and successor owners of the corporation in paragraph 5, above. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this agreement.

42. This Consent Agreement contains all terms of the

settlement agreed to by the parties.

Civil Penalty

43. Pursuant to section 113(d) and (e) of the CAA, 42 U.S.C. § 7413(d) and (e), EPA has determined that an appropriate civil penalty to settle this action is the amount of One Thousand Dollars (\$1,000). In conjunction with paragraphs 38 and 40 of this Consent Agreement, Respondents agree to pay a \$1,000 civil penalty.

44. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) calendar days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

45. Within thirty calendar days of receipt of the Final Order issued by the Regional Judicial Officer, Respondents shall pay the agreed upon civil penalty in the amount of One Thousand Dollars (\$1,000) by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

EPA Region 8
Regional Hearing Clerk
P.O. Box 360859M
Pittsburgh, PA 15251

The check shall reference the Respondents' names and facility address and the EPA Docket Number of this action. A copy of the check shall be sent simultaneously to:

Ms. Tina Artemis
Regional Hearing Clerk, Mail Code: 8RC
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Marc Weiner
Enforcement Attorney, Mail Code: 8-ENF-L
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

General Provisions

46. This Consent Agreement shall not relieve Respondent of the obligation to comply with all applicable provisions of federal, state or local law.

47. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

48. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action

instituted as a result of Respondents' failure to perform pursuant to the terms of this Agreement.

49. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

50. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

51. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this Consent Agreement.

52. This Consent Agreement resolves Respondents' liability for federal civil penalties under sections 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), for the alleged violations contained in this Consent Agreement. This Consent Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

53. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

Asbestos Technology, Inc.
Respondent

Date: 10/6/04 By: SIGNED

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Complainant

Date: 10/22/04 By: SIGNED
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

Date: 10/22/04 By: Michael T. Risner
Michael T. Risner, Director
David Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: 10/13/04 By: SIGNED
Marc Weiner, Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON
OCTOBER 26, 2004.